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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
05/241,127	02/01/99	SCHWINN	G HH253-KFM

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IM62/0621

EXAMINER	
RUDDOCK, U	
ART UNIT	PAPER NUMBER

1771

DATE MAILED:

06/21/00

*6*

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

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## Office Action Summary

Application No.

09/241,127

Applicant(s)

Georg Schwinn

Examiner

Ula C. Ruddock

Group Art Unit

1771



☒ Responsive to communication(s) filed on Feb 1, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claim

☒ Claim(s) 1-19 is/are pending in the application

Of the above, claim(s) 9-19 is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-8 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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### DETAILED ACTION

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8, drawn to a flat-shaped article, classified in class 442, subclass various.
- II. Claims 9-19, drawn to a method for manufacturing a flat-shaped article, classified in class 156, subclass various.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product can be made another process, i.e. by casting the adhesive skein on the face of one layer to form an intermediate product which is then joined to another layer to form the claimed article.

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3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Karl F. Milde on May 23, 2000, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-8.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Objections***

5. Claim 6 is objected to because of the following informalities: The term "thermoplast" is misspelled in line 6. It appears as though Applicant meant thermoplastic. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what is meant by the word "specular." *Webster's Collegiate Dictionary* defines specular as "relating to or having the qualities of a mirror." It is not seen how this term should be interpreted. Further clarification is required.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strack et al. (US 5,681,645). Strack et al. disclose flat elastomeric nonwoven laminates. The laminate material comprises a (1) first web of a knit, woven, or scrim material together with (2) a second web of a nonwoven elastomeric material and (3) a third web of a knit, woven or scrim material, to provide a laminate with stretch and recovery (col 1, ln 16-26). The nonwoven

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elastomeric web can be laminated to the web of knit, woven, or scrim material using an adhesive (col 9, ln 35-36). An adhesive web can be interposed between the textile material and the nonwoven elastomeric web to provide the bonding (col 9, ln 51-53). An important factor for the adhesive is that it not interfere with the elasticity of the laminate. Therefore, the adhesive must be discontinuous across the laminate. Application of the adhesive can be done by screen printing and flexographic printing (col 9, ln 54-62). The adhesive must be applied in a pattern, i.e. discontinuously (col 10, ln 52-53). The Examiner believes that by applying the adhesive in a pattern, Strack et al. inherently disclose that the adhesive can be applied in parallel strips that are either straight or meandering, that the adhesive skeins run in zig-zag or sinusoid curves, or that the adhesive skeins are applied as interrupted skein segments.

Strack et al. do not specifically disclose an adhesive skein layer. However, the general disclosure of an adhesive web suggests the use of any web, including one containing a skein. It would have been obvious to one having ordinary skill in the art to have used an adhesive skein as Strack's adhesive web. One would have been motivated by the degree of adhesion desired in the laminate.

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Strack et al. also do not teach that the outer webs comprise polyolefins. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used polyolefins in the outer webs of Strack et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. In the present case, it would have been obvious to the skilled artisan to have used polyolefins in the outer webs, motivated by the desire to obtain a laminate having desired elastic and strength properties associated with the use of a polyolefin.

### **Conclusion**

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is (703) 305-0066. The Examiner can normally be reached Monday through Thursday from 6:30 AM to 5 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor Terrel Morris can be reached at (703) 308-2414.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-2351.

Ula C. Ruddock *U.C.R.*  
Patent Examiner  
Art Unit 1771  
June 16, 2000

*Blaine Copenheaver*  
BLAINE COPENHEAVER  
PRIMARY EXAMINER